

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.11.2005

CORAM:

THE HON'BLE MR.JUSTICE P.SATHASIVAM

and

THE HON'BLE MR.JUSTICE S.K. KRISHNAN

Writ Petition No.13361 of 2003

Parameswaran

.. Petitioner

vs.

1. State of Tamil Nadu
rep. by its Secretary to Government
Rural Development Department
Fort St. George
Chennai 9.
 2. The District Collector
Nellai Kattabomman District
(Now Tirunelveli District).
 3. The District Development Officer
Cheranmadevi
Nellai Kattabomman District
(Now Tirunelveli District).
 4. The Block Development Officer
Radhapuram
Nellai Kattabomman District
(Now Tirunelveli District).
 5. The Block Development Officer
Velliyoor
Nellai Kattabomman District
(Now Tirunelveli District).
 6. Tamil Nadu Administrative
Tribunal, rep. by its
Registrar, High Court Campus
Chennai 600 104.
- ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified Mandamus calling for the relating to the impugned order made in OA NO. 2420/94 dt. 4.7.2002 on the file of the Tamil Nadu Administraive Tribunal at Chennai quash the same and consequently direct the respondents 1 to 5 to grant all

attendant and monetary benefits to the petitioner that will accrue to him from the date which were granted to the person immediately Junior to the petition and cost.

For petitioner : Mr. K. Premkumar
for Mr. K.S. Kumar

For respondents : Mr. E. Sampathkumar
Government Advocate for R.1 to 5

ORDER

(ORDER of the Court was made by P.SATHASIVAM,J.)

Aggrieved by the order of the Tamil Nadu Administrative Tribunal, Chennai dated 04.07.2002 made in O.A.No.2420 1994, the petitioner has filed the above writ petition.

2. The case of the petitioner is briefly stated hereunder:

(a) The petitioner was appointed as Rural Welfare Officer Grade II on 01.08.1963 at Sengamangalam in Salem District. Thereafter, he was transferred and posted at Sathankulam Panchayat Union, Tirunelveli District and to Radhapuram Block Development Office. On 11.06.1985, he was promoted as Assistant and posted at Valliyoor Panchayat Union. While so, on 12.03.1985 and on 05.09.1985, he received notices from the Commissioner, Radhapuram Panchayat Union, directing him to refund the advance amount of Rs.13,000/-. Thereafter, on 29.09.1985, he was placed under suspension by the District Collector on the ground that an enquiry into grave charge was contemplated against him. On 16.10.1985, he submitted a representation denying the allegations leveled against him. In spite of his detailed representation, on 22.11.1985, the District Development Officer, Cheranmadevi issued a charge memo by invoking Rule 17(a) of the Tamil Nadu Civil Service (Classification, Control and Appeal) Rules, by framing three charges against him. He submitted an explanation detailing the entire facts. Meantime, his suspension was extended periodically and finally upto 30.09.1986 or till the final orders were passed in the Departmental proceedings initiated against him.

(b) Pursuant to the charge memo dated 22.11.1985, an enquiry was conducted by the Divisional Development Officer on 14.11.1986. Without passing any order on the charge memo dated 22.11.1985, the third respondent issued

another charge memo dated 09.11.1987, framing the same charges as found in the earlier charge memo dated 22.11.1985. He also submitted explanations for the second charge memo on 08.06.1988 and 06.07.1988, denying the charges contained therein. An enquiry was conducted with regard to second charge memo on 14.11.1986 and Enquiry Officer submitted his final report to the second respondent on 02.11.1988. Since the petitioner was not paid subsistence allowance, he filed O.A.No.5002 of 1993 before the Tribunal for setting aside the order of suspension dated 29.09.1985. On 25.10.1993, direction was issued by the Tribunal for payment of subsistence allowance as per Rules.

(c) While so, the second respondent, District Collector, Tirunelveli District, issued a fresh charge memo dated 05.02.1994, leveling the same set of charges, contained in the earlier charge memos dated 22.11.1985 and 09.11.1987, for which, he submitted his explanation on 01.03.1994, requesting the second respondent to drop the charges, as the same are belated and unwarranted. Without considering his explanation, a fresh Enquiry Officer was appointed.

(d) Questioning the third charge memo, the petitioner filed O.A.No.2420 of 1994 before the Tribunal. The main ground taken before the Tribunal was that the subsequent charge memo (third charge memo) for the same set of facts and subject matter which were already put on enquiry by appointing Enquiry Officers and the outcome of which enquiry was not disclosed is bad in law and liable to be quashed. He also challenged the charge memo on the ground of limitation. The Government also passed order on 30.12.1994, not allowing him to retire from service on the date of his superannuation i.e., 31.12.1994 on the ground that enquiry against grave charges of criminal misconduct is pending against him. In the meantime, the criminal proceedings initiated against him in C.C.No.25 of 1995 on the file of Judicial Magistrate, Valliyoor ended in acquittal on 06.10.1997 and the said order was also communicated to the respondents. In view of the same, according to the petitioner, there is no necessity for initiating any further Departmental proceedings and the third charge memo is unwarranted and liable to be dropped. However, the Tribunal, by the impugned order dated 04.07.2002, dismissed his application and permitted the Department to proceed with the enquiry based on the third charge memo. Questioning the same, the petitioner has filed the above writ petition.

3. Heard the learned counsel for the petitioner as well as respondents 1 to 5.

4. The only point for consideration in this writ petition is, whether the second respondent is justified in issuing the third charge memo dated 05.02.1994, on the same set of allegations, which were the subject matter of two earlier charge memos and the Tribunal is justified in dismissing the application of the petitioner praying to quash the same?

5. In order to answer the above questions, it is useful to refer the charges contained in the first charge memo dated 22.11.1985.

"Charge No.1: That he has failed to utilise the advance amount of Rs.26,000/- paid to him for execution of works noted in para I above in time and thereby he is responsible for the non-adjustment of advance and for the retention, misusing of Government money at his own accord without utilising the money for which it has been paid.

Charge No.2: That he has failed to complete the work entrusted to him in time by utilising the advance paid to him and thereby he has neglected the Government instructions in the execution of work under NREP/RLEGP and create Public criticism in administering the Government scheme.

Charge No.3: That he has failed to discharge his legitimate duties entrusted to him. "

For the above said charges, the petitioner has submitted his explanation dated 30.01.1986, denying all the allegations made against him. For the reasons best known to the District Development Officer, Cheranmadevi, who issued the said charge memo, no further action was taken by conducting any enquiry.

6. Now, let us refer the charges found in the second charge memo dated 09.11.1987, issued by the very same Officer, which reads as follows.

"Charge No.1: That he has failed to utilise the advance amount, Rice and Cement to a tune of Rs.61,293/- as noted above in para (1) for the execution of the above said two works and to complete the works and thereby he is responsible for the non adjustment of advance and for the retention misusing of Government money at his own accord without utilising the money for which it has been paid.

Charge No.2: That he has failed to complete the work entrusted to him by utilising the advance paid to him and thereby he has neglected the Government instructions in the execution of works under NREP/RLEGP and create public criticism in administering the Government Scheme.

Charge No.3: That he has failed to discharge his legitimate duties entrusted to him as referred to para (1) and (2) above. "

Here again, the petitioner submitted his explanation on 30.11.1987, wherein also he denied the allegations. He sent a further explanation on 08.06.1988. Admittedly, no further action was taken pursuant to the same by conducting enquiry.

7. Now, let us see the third charge memo dated 05.02.1994, issued by the District Collector, Tirunelveli Kattabomman District. The charges leveled therein are as follows.

"Charge No.1: That he has failed to utilise the advance amount, Rice and

Cement to a tune of Rs.61,293/- as noted above in para 1 for the execution of the works entrusted to him under NREP/RLEGP at Radhapuram Panchayat Union during 84-85.

Charge No.2: That he has failed to complete the above works by utilising the advanced paid to him. "

For the said charges, the petitioner has submitted his explanation to the Collector on 01.03.1994. He has not only questioned the charges on merits, but also highlighted that the said charge memo cannot be sustained on the ground of delay. Questioning the third charge memo, the petitioner has approached the Tamil Nadu Administrative Tribunal by filing O.A.No.2420 of 1994. In the meanwhile, the criminal case filed against him in C.C.No.25 of 1995 on the file of Judicial Magistrate, Valliyoor, ended in acquittal. A perusal of the order of the learned Magistrate, which is available at pages 87 to 95 of the typedset of papers shows it is an honorable acquittal on merits.

8. The above details amply show that there is no explanation at all for not pursuing the first and second charge memos or for not considering the explanations offered by the petitioner for the same. Likewise, there is no reply for not pursuing the third charge memo, when admittedly no order of stay was passed by the Tribunal in OA.No.2420 of 1994. In other words, though the said application had been filed before the Tribunal in 1994 and the same was disposed of on 04.07.2002, admittedly, there was no order barring the Department from proceeding with the charge memo. Even before us, there is no answer for not pursuing the charge memo and completing the enquiry.

9. In this regard, it is useful to refer the latest judgment of the Supreme Court in the case of P.V. Mahadevan vs. M.D., Tamil Nadu Housing Board reported in 2005 (4) CTC 403. In that case, in respect of certain commissions and omissions in 1990, which were pointed out in the Audit Report in 1994-94, a charge memo came to be issued in 2000. Pointing out that the reason for delay was unacceptable and finding that the disciplinary proceedings was prejudicial to public interest and the interest of employee and taking note of the fact that the employee

reached superannuation, and also considering that the mental agony and suffering of the employee due to protracted disciplinary proceedings, was more than punishment to be awarded, the Apex Court quashed the charge memo and permitted the employee to draw retrial benefits. The following observations made in para 14 of the said judgment are relevant.

"14. Under these circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

10. In the case before us, the alleged failure to utilise the advance amount and failure to complete the work entrusted to him by utilising the funds had taken place prior to 1985. It is not a case of misappropriation or retention of Government money. On the other hand, the allegation relates to negligence in monitoring the projects and non-utilising the funds within the time prescribed.

Taking note of the same and in the light of unexplained reason for not pursuing the first and second charge memos, when admittedly, the petitioner submitted his explanations denying all the allegations and considering the length of time involved, viz., 20 years, we are of the view that the judgment of the Supreme Court referred to above (2005 (4) CTC 403), is directly on the point. Further, the petitioner has already suffered enough mental agony on account of the protracted disciplinary proceedings. These material aspects have not been considered by the Tribunal, which has committed an error in dismissing the original application filed by the petitioner.

Under these circumstances, the order of the Administrative Tribunal dated 04.07.2002 made in OA.No.2420 of 1994 and the charge memo dated 05.02.1994 are quashed and the writ petition is allowed. The petitioner will be entitled to all the retiral benefits in accordance with law. The retiral benefits shall be disbursed within a period of two months from the date of receipt of a copy of this order. No costs.

Kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
State of Tamil Nadu
Rural Development Department
Fort St. George
Chennai 9.

2. The District Collector
Nellai Kattabomman District
(Now Tirunelveli District).

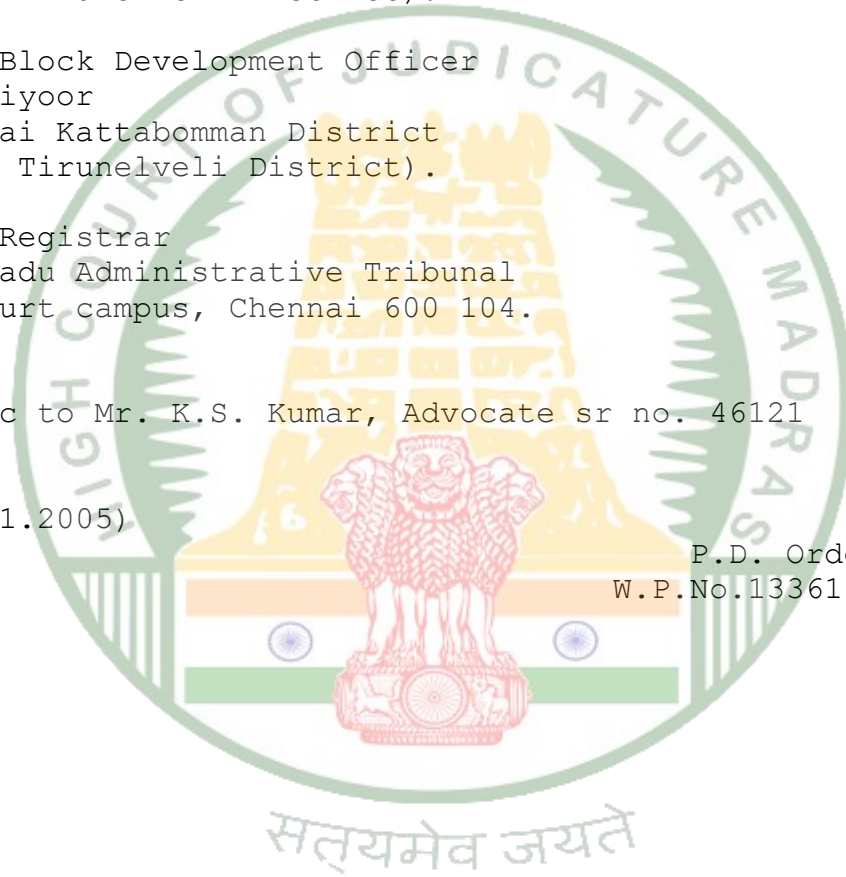
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Nellai Kattabomman District
(Now Tirunelveli District).
6. The Registrar
Tamil Nadu Administrative Tribunal
High Court campus, Chennai 600 104.

+ one cc to Mr. K.S. Kumar, Advocate sr no. 46121

JE (CO)
NM(28.11.2005)

P.D. Order in
W.P.No.13361 of 2003



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